III.

It is also well setled that the burden of proof is on the railroad company to prove that its employe was engaged in interstate commerce. Petitioner has not only failed to sustain that burden, but, the evidence, in our opinion is indubitably the other way.

Payne v. *Industrial Com.*, 292 Ill. 223.
Goldsmith v. *Payne*, 300 Ill. 119.

CONCLUSION.

There is nothing in the evidence to show what operation was necessary to place the coal actually into the locomotive engine after it had been lifted into the coal chute. To extend the Federal Statute to a case like that at bar would be equivalent to saying that the person who put ink in the inkwell for the bookkeeper in the roundhouse was likewise governed by the provisions of the Federal Act, as well as the butcher who delivered meat to an engineer running an interstate train. In this record there is not even any proof on the part of the railroad company that the switch engine located in the roundhouse on the day claimant was hurt was allocated to interstate commerce, but it is a far cry from actually putting coal into an interstate engine to a situation like the present where the claimant was hurt while oiling a motor which had just been started by the claimant, which motor was later used to lift coal from a ground bin to a coal chute in a roundhouse.

For the foregoing reasons, we respectfully pray that the judgment of the Circuit Court of Cook County, Illinois, be affirmed.

Respectfully submitted,
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